



Office of the Attorney General

State of Texas

December 11, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. Stephen R. Alcorn
Assistant City Attorney
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR96-2347

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37651.

The Grand Prairie Police Department (the "department") received four requests for several categories of information related to an internal investigation of two police officers. You explain that some of the requested information has been released. You claim, however, that any requested information that is contained within the department's internal investigation file is excepted from required public disclosure by sections 552.103, 552.107, and 552.108 of the Government Code. You also claim that the information is made confidential by section 143.089 of the Local Government Code. You have submitted to this office the information within the investigation file that you seek to withhold. Since you only seek to withhold the requested information that is contained within the investigation file, we assume that the department will or has already released the requested information not contained within the investigation file which is not otherwise confidential by law.

We initially recognize that section 143.089 of the Local Government Code is applicable to the documents at issue as they involve the personnel files of department police officers in a city subject to chapter 143. Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(a)(2) mandates that documents relating to "any misconduct by the fire fighter or police officer" must be placed in a police officer's civil service file "if the

letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter." The documents submitted to this office indicate that the department sustained at least one of the allegations against the officers. Section 143.089(e) states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." Section 143.089(e) of the Local Government Code thus lays out a system of mandatory access to civil service records. This mandatory access provision for officers prevails over other exceptions within the Government Code. *See* Open Records Decision No. 598 (1991) at 3-4 (provisions of Government Code 552 do not prevail over special rights of access to records).

You indicate, however, that the documents submitted to this office are in the department's internal affairs file. If the sustained charges did not lead to disciplinary action, the files may properly be only in the department's internal files. Section 143.089(g) of the Local Government Code allows for the maintenance of a separate departmental file in addition to the civil service file provided for in section 143.089(a)(2). This separate file is for the department's own internal use:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

A request for information contained within the internal file must be referred to the civil service director or his designee. Local Gov't Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). If the sustained charges within the documents resulted in disciplinary action, the documents are part of the officer's civil service file. Therefore, if the requested documents were part of the internal affairs file but were transferred to the requestor's civil service file pursuant to the mandatory provision of section 143.089(a)(2), they must be released to the requesting officer or his attorney in accordance with the mandatory access provision of section 143.089(e). If, however, any of the requested documents are properly held only within the department's internal file, the request for this information must be referred to the civil service director or his designee.

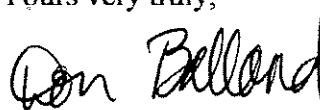
Three of the requestors in this case, however, do not have a right of access under the Local Government Code. Thus, if the documents were transferred to the officers' civil service file, you contend that they may still be withheld from these requestors pursuant to sections 552.103, 552.107, and 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or

notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In this instance, you state that the department files involve possible criminal conduct. The materials submitted to this office also show that the investigations implicate the jurisdiction of another law enforcement agency. You state that the investigation is pending and that the agency has requested that no information be released. Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 372 (1983), 474 (1987); *see also* Attorney General Opinion MW-575 (1982) at 1-2; Open Records Decision No. 493 (1988) at 2. Furthermore, the need of another governmental body to withhold the requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision 586 (1991). Under these circumstances, we believe that the department may withhold the requested documents from the other three requestors under section 552.108.¹

In summary, if the investigation file at issue remains properly within the department’s internal file, the request for this information must be referred to the civil service director or his designee. If, however, the information has been transferred to the officer’s civil service file, the department must release the material to the officer or his attorney. The department may withhold the investigation file from the other requestors.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 37651

Enclosures: Submitted documents

¹Because we are able to make a determination under section 552.108, we do not address your arguments under sections 552.103 or 552.107.

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